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No. 99-830

Supreme Court, U.S.
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In The

Supreme Court of the United States

DON STENBERG,
Attorney General of the State of Nebraska, *et al.*,

Petitioners,

v.

LEROY CARHART,

Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

BRIEF OF AMICI CURIAE RELIGIOUS COALITION FOR REPRODUCTIVE CHOICE, FIFTY-THREE OTHER RELIGIOUS ORGANIZATIONS AND RELIGIOUSLY AFFILIATED ORGANIZATIONS, AND FOURTEEN CLERGY AND LAYPERSONS IN SUPPORT OF RESPONDENT

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INTEREST OF AMICI CURIAE

Amici are religious organizations, religiously affiliated organizations, and individual clergy and laypersons dedicated to preserving religious freedom for all persons, and to protecting a woman's right to terminate her pregnancy in consultation with her religion, values, and conscience.[1] The statements of interest provided by individual organizations, representatives, and individuals, included in Appendix A to this brief, demonstrate their varied perspectives on abortion, and their shared support of the Constitution's protection of a woman's right to make reproductive choices in accord with her individual conscience and free from governmental interference. A full listing of the fifty-four organizations and fourteen individuals signing this brief as amici curiae appears in Appendix B.

Because amici recognize the many divergent theological perspectives regarding abortion, amici agree that all women should be free to follow their religious convictions and to seek the best available medical advice, without governmental coercion or constraint, in making the difficult decision about whether and how to terminate a pregnancy. Amici believe that the Court should not allow

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[1] Amici submit this brief amici curiae with the consent of the parties. Letters providing the consent of the parties are being filed with the Clerk of the Court concurrently with the filing of this brief. Pursuant to Supreme Court Rule 37.6, amici state that the brief in its entirety was drafted by amici curiae and their counsel. No monetary contribution toward the preparation or submission of this brief was made by any person other than amici curiae, their members, or their counsel.

Nebraska or any other state to undermine the Constitution's respect for religious liberty and personal conscience.

SUMMARY OF ARGUMENT

Nebraska's so-called "partial-birth abortion" ban – which drastically curtails access to pre-viability abortions – unacceptably interferes not only with the right to privacy, but also with the freedom of religion and conscience that underlies and defines that privacy right. As the Court explained in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), the right of individual privacy prevents governmental interference into certain of an individual's most critical decisions about family, including whether to marry or divorce, and whether to conceive and bear a child. Those decisions undeniably implicate religious concerns, as they are made and guided by religious teachings and individual conscience. Freedom of religion and conscience, therefore, demands that the utmost latitude be accorded to decisions in the family sphere.

This position is compelled both by the founders' wisdom and the history of the divisive debate on the scope of the right of privacy. The intense debate about abortion in our country, including "partial-birth abortion," has been, and continues to be, driven by profound disagreement among and even within religions. Religious views on the topic range from the belief that abortion is a sin, to the belief that abortion may be a religious obligation under certain circumstances, to the belief that

women must be free to make their own decisions free of governmental interference. A brief examination of the religious beliefs of the different traditions, including the Catholic, Protestant and Jewish traditions, reveals immensely varied views on the issue.

Where religious people have such profound and sincere differences – even within denominations and faith groups – the right of privacy prevents government from enacting restrictive abortion legislation that interferes with the exercise of personal and religious conscience. A woman who is faced with the difficult moral decision of whether to undergo an abortion must be free to decide how to respond, in consultation with her family, her doctor, and her religious beliefs. Nebraska's ban on "partial-birth abortions," Neb. Rev. Stat. §§ 28-326(9), 28-328(1)-(4) [hereinafter "Act"], which is so broad as to ban the safest and most common abortion procedures used prior to viability without any exception for the woman's health, impermissibly interferes with the religious liberty and freedom of conscience that shape the right to privacy.

For this reason, as well as those asserted by respondent, the Court of Appeals for the Eighth Circuit properly held that the Act constitutes an undue burden on a woman's right to terminate a pregnancy prior to viability in violation of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). It is only through semantics and word play that several amici who have filed briefs in support of petitioners contend that *Casey* does not provide the relevant analytical framework. The Act does not regulate the process of "birth," despite the name given to it by its proponents. Nor does it deal with

infanticide. Nor is it a late-term ban. Rather, it is so broadly worded that it bans a range of abortion procedures without regard to fetal viability. That is impermissible under *Casey*, and the Eighth Circuit's judgment should be affirmed in order to afford the vital protection for freedom of conscience in making basic family decisions, which is required by the Constitution.

ARGUMENT

I. THE ACT IMPERMISSIBLY INTRUDES UPON INDIVIDUAL DECISIONS ABOUT FAMILY PROTECTED BY THE RIGHT OF INDIVIDUAL PRIVACY AND RELIGIOUS LIBERTY.

In reaffirming the essential holding of *Roe v. Wade*, 410 U.S. 113 (1973), the Court stated in *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), that it is "a promise of the Constitution that there is a realm of personal liberty which the government may not enter." *Id.* at 847. Fundamentally, this promise means that the "Constitution places limits on a State's right to interfere with a person's most basic decisions about family and parenthood." *Id.* at 849. That prohibition on governmental interference includes the freedom to make personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. *Id.* at 851 (citing *Carey v. Population Servs. Int'l*, 431 U.S. 678, 685 (1977)). As the Court observed:

> These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under compulsion of the State.

Id. at 851.

The Court also recognized that "[m]en and women of good conscience can disagree . . . about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage." *Id.* at 850; *see also Roe*, 410 U.S. at 116 (acknowledging "awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians, and of the deep and seemingly absolute convictions that the subject inspires"). Under those circumstances, the Court recognized that "[o]ur obligation is to define the liberty of all, not to mandate our own moral code." *Casey*, 505 U.S. at 850. Where reasonable people of good conscience disagree, the Court held, government *cannot* adopt the position of one set of persons over all others when doing so would intrude upon a protected liberty. *Id.* at 851 (*citing Texas v. Johnson*, 491 U.S. 397 (1989); *West Va. State Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943)).

Thus, as set forth in *Casey*, the right to privacy that protects a woman's right to make her own reproductive choices has two aspects: *first*, the individual's right to make crucial, life-defining decisions free of governmental interference, and *second*, the need for the government not to adopt one position over all others where reasonable persons disagree about decisions of such importance.

The *Roe-Casey* formulation of the right to privacy helps to ensure the religious freedoms guaranteed by the Establishment and Free Exercise clauses. The concerns set forth in *Casey* are precisely the concerns that have motivated the Court's protection for religious liberty under the First Amendment religion clauses. The Court has observed that the constitutional prohibition against legislation "respecting an establishment of religion or prohibiting the free exercise" thereof has a "double aspect." *Cantwell v. Connecticut*, 310 U.S. 296, 303 (1940). "On the one hand, it forestalls compulsion by law of the acceptance of any creed or the practice of any form of worship. Freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose cannot be restricted by law. On the other hand, it safeguards the free exercise of the chosen form of religion." *Id.*

Thus, it is an "individual's freedom of conscience [that is] the central liberty that unifies the various Clauses in the First Amendment." *Wallace v. Jaffree*, 472 U.S. 38, 50 (1985). The "individual's freedom to choose his own creed is the counterpart of his right to refrain from accepting the creed established by the majority." *Id.* at 52. This conclusion "derives support not only from the interest in respecting the individual's freedom of conscience, but also from the conviction that religious beliefs worthy of respect are the product of free and voluntary choice by the faithful." *Id.* at 53. Thus, the Court has held that " '[i]f there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to

confess by word or act their faith therein.' " *Id.* at 55 (quoting *Barnette*, 319 U.S. at 642); *see also School Dist. of Abington Township v. Schempp*, 374 U.S. 203, 226 (1963) ("The place of religion in our society is an exalted one, achieved through a long tradition of reliance on the home, the church and the inviolable citadel of the individual heart and mind. We have come to recognize through bitter experience that it is not within the power of government to invade that citadel . . . .").

Thus, by preserving the right to privacy in *Casey*, the Court also furthers the constitutional objectives that have long been served by the Court's First Amendment religious jurisprudence: Matters of individual conscience require protection from governmental interference, and adoption of one "creed" by the state over all others impermissibly and unconstitutionally impedes the exercise of individual conscience. This overlap is not surprising. For many if not most Americans, the decisions whether to marry or divorce and whether to conceive and bear a child are simultaneously matters of individual choice and religious significance. "These matters, involving the most intimate and personal choices a person may make in a lifetime," *Casey*, 505 U.S. at 851, are by nature shaped by the beliefs an individual holds most sacred. *See also Roe*, 410 U.S. at 116 ("One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion."). The Constitution prohibits governmental

interference into crucial family decisions for which individuals look to the guidance of religious teachings and individual conscience.[2] Where reasonable persons of good conscience disagree – as they do when it comes to abortion, *see infra* – the Constitution mandates that the government refrain from imposing one view over all others.

The Court's holding in *Casey*, therefore, that prior to viability, regulations on abortion are permitted only if they do not impose an "undue burden" on a women's ability to decide whether or not to terminate her pregnancy, derives from a woman's right to privacy, but it also protects her freedom of conscience guaranteed by the religion clauses. This Court has properly respected the need for a woman's autonomy in making such decisions, which must be made based on an individual woman's circumstances, her own personal or religious conscience, and the best available medical advice. Thus, the Court's position says that every woman must be free to make decisions about when to have children, according to her

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[2] Historically, of course, the Court's decisions according protection to basic decisions regarding family have drawn significantly on both the First Amendment's guarantees of religious freedom and the right to privacy founded in the Fourteenth Amendment. *See, e.g., Eisenstadt v. Baird*, 405 U.S. 438 (1972) (privacy); *Griswold v. Connecticut*, 381 U.S. 479 (1965) (privacy); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (free exercise). For example, the Court has guaranteed parents the right to select private, religious schools for their children, *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), and the right to an exemption from compulsory schooling laws where those laws interfered with a particular religious way of life, *Wisconsin v. Yoder*, 406 U.S. 205 (1972).

own conscience and religious beliefs. Nebraska's Act, therefore, violates the sanctity of individual decisions about family life protected by both the right of individual privacy and freedom of conscience.

II. THE VARIETY OF RELIGIOUS VIEWS ABOUT ABORTION PROHIBITS NEBRASKA FROM ENACTING LEGISLATION THAT INTERFERES WITH A WOMAN'S RIGHT TO TERMINATE HER PREGNANCY.

As *Casey* acknowledges (and the Court's First Amendment jurisprudence concurs), where fundamental rights are implicated, it is precisely because reasonable persons of good conscience disagree that the government should refrain from acting. In enacting a ban on "partial-birth abortions," the Nebraska Legislature has violated this basic tenet of constitutional law. The Act is, therefore, unconstitutional.

The diverse religious groups in this country disagree profoundly about abortion. *See Roe*, 410 U.S. at 160.[3] This disagreement is not only over when life begins, but also over whether and how much the government should

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[3] The structure of this discussion is derived in part from the Brief Amicus Curiae for American Jewish Congress, Board of Homeland Ministries – United Church of Christ, National Jewish Community Relations Advisory Council, The Presbyterian Church (U.S.A.) by James E. Andrews as Stated Clerk of General Assembly, the Religious Coalition for Abortion Rights, St. Louis Catholics for Choice, and thirty other religious groups filed in *Webster v. Reproductive Health Services*, 492 U.S. 490 (1989).

interfere with a woman's decision to terminate or continue her pregnancy and whether abortion may be required if the mother's life or health is endangered. For example, the official doctrine of the Roman Catholic Church holds that life begins at conception, and declares abortion to be immoral. *See* The Declaration on Abortion of the Sacred Congregation for the Doctrine of the Faith (1974). Some Roman Catholics, however, have explored and advocated religious views that would tolerate abortion under some circumstances. *See, e.g.*, Gregory Baum, "Abortion: An Ecumenical Dilemma," *Commonweal*, Nov. 30, 1973, at 231; *Abortion and Catholicism: The American Debate* (Patricia Beattie Jung & Thomas A. Shannon eds., 1988); Mary C. Segers, "Abortion and the Culture," *in Abortion* 229 (Sidney Callahan & Daniel Callahan eds., 1984). One Catholic organization has recently stated that there "is much in the Catholic tradition that supports the pro-choice position. . . . [A] careful reading of church documents shows that while the prohibition of abortion is a serious teaching, room remains for Catholics to support the legalization of abortion and even its morality in a wide range of circumstances." Catholics for a Free Choice, *Prayerfully Pro-Choice: Resources for Worship* (Religious Coalition for Reproductive Choice 1999).[4]

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[4] According to a recent poll, eighty-two percent of Catholics in this country believe that abortion should be legal either under certain circumstances or without restrictions. Moreover, thirty-nine percent believe that a woman should be able to decide to have an abortion no matter what the reason. Only fifteen percent of Catholics believe that abortion should be illegal in all circumstances. Time/CNN Nationwide Poll (Sept. 27-28, 1995), *cited in* Catholics for a Free Choice, *The Catholic Vote and Abortion*.

In contrast to traditional Catholicism, as a matter of religious belief, many Protestant theologians and scholars maintain that "human personhood . . . does not exist in the earlier phases of pregnancy." *McRae v. Califano*, 491 F. Supp. 630, 701 (E.D.N.Y.), *rev'd on other grounds sub nom. Harris v. McRae*, 448 U.S. 297 (1980); Virginia Ramey Mollenkott, *Respecting the Moral Agency of Women* (undated) ("[T]he fetus is biologically human only in the sense that any part of a human body is human: every cell carries the full genetic code. . . . The full human personhood of the embryo from the moment of conception is therefore a theological assumption that cannot be proved."); Paul D. Simmons, *Personhood, the Bible, and the Abortion Debate* (undated); *Roe*, 410 U.S. at 160 ("There has always been strong support for the view that life does not begin until live birth. . . . It may be taken to represent . . . the position of a large segment of the Protestant community, insofar as that can be ascertained; organized groups that have taken a formal position on the abortion issue have generally regarded abortion as a matter for the conscience of the individual and her family."). Protestant groups disagree, however, about the proper approach to abortion.

The stand of the American Baptist Churches in the USA, for example, reflects the diversity of theological beliefs about abortion present within its membership. In 1988, the General Board adopted a resolution that states: "We grieve with all who struggle with the difficult circumstances that lead them to consider abortion. Recognizing that each person is ultimately responsible to God, we encourage women and men in these circumstances to

seek spiritual counsel as they prayerfully and conscientiously consider their decision." General Board, American Baptist Churches in the USA (1988). The General Board acknowledged that "[m]any of our membership seek legal safeguards to protect unborn life. Many others advocate for and support family planning legislation, including legalized abortion as being in the best interest of women in particular and society in general." *Id.*

The Episcopal Church reaffirmed in its 1994 General Convention its support for women's rights over their own bodies, which was first acknowledged through a resolution in 1967. That Convention expressed "its unequivocal opposition to any legislative, executive or judicial action on the part of local, state or national governments that abridges the right of a woman to reach an informed decision about the termination of pregnancy or that would limit the access of a woman to safe means of acting on her decision." 71st General Convention, Episcopal Church, Resolution No. 1994-A054 (1994). The General Convention explained: "We believe that legislation concerning abortions will not address the root of the problem. We therefore express our deep conviction that any proposed legislation on the part of national or state governments regarding abortions must take special care to see that the individual conscience is respected, and that the responsibility of individuals to reach informed decisions in this matter is acknowledged and honored as the position of this Church." *Id.*[5]

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[5] At their annual meeting in 1978, the Episcopal Women's Caucus resolved: "We are deeply disturbed over the increasingly bitter and divisive battle being waged in legislative bodies to force continuance of unwanted pregnancies and to limit an American woman's right to abortion. We believe that all should be free to exercise their own consciences on this matter and that where widely differing views are held by substantial sections of the American religious community, the particular belief of one religious body should not be forced on those who believe otherwise."

Similarly, the General Synod of the United Church of Christ resolved in 1979 to reaffirm full freedom of choice for the persons concerned in making decisions regarding pregnancy, to affirm "the fact that, since life is less than perfect and the choices that people have to make are difficult, abortion may sometimes be considered," and to affirm that "God calls us when making choices, especially as these relate to abortion, to act faithfully." United Church of Christ, *Abortion, A Resolution of the 12th General Synod of the United Church of Christ* (1979). The General Synod reaffirmed the right of women to choose abortion in 1981, 1985, 1987, 1989, and 1991. In 1987, the 16th General Synod resolved to uphold the "right of men and women to have access to adequately funded family planning services, and to safe, legal abortions as one option among others," and to urge "pastors, members, local churches, conferences, and instrumentalities to oppose actively legislation and amendments which seek to revoke or limit access to safe and legal abortions." United Church of Christ, *Sexuality and Abortion: A Faithful Response, A Resolution of the 16th General Synod of the United Church of Christ* (1987).

With regard to "partial-birth abortion" bans, the Reverend Dr. Jay Lintner, Director, Washington Office, United Church of Christ, has stated: "Let the church and the

religious community offer its advice on this issue, advice to the women facing the choice. Let the medical community offer its advice. But keep the government out of it. Protect the fundamental religious responsibility of a woman to make this decision about her own body and her own responsibility for the developing life within her. This is the overwhelming religious consensus within our church." Rev. Dr. Jay Lintner, *Statement on Partial-Birth Abortions Urging the Senate To Sustain President Clinton's Veto of H.R. 1122* (Sept. 17, 1998).

Some Protestant groups treat abortion as a matter of individual conscience and believe that the government should not interfere in that matter because of the variety of views held by members of these groups. For example, the General Assembly of the Presbyterian Church (U.S.A.) adopted a resolution in 1983, and reaffirmed it in 1985, 1987, 1988, 1989, and 1991, which states that "The Presbyterian Church exists within a very pluralistic environment. Its own members hold a variety of views. It is exactly this pluralism of beliefs which leads us to the conviction that the decision regarding abortion must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference." *Covenant and Creation: Theological Reflections on Contraception and Abortion*, Minutes of the 195th General Assembly of the Presbyterian Church 369 (1983). The Presbyterian Church (U.S.A.) believes, therefore, that "[t]he legal right to have an abortion is a necessary prerequisite to the exercise of conscience in abortion decisions. Legally speaking, abortion should be a woman's right because, theologically speaking, making a decision about abortion is, above all, her

responsibility." *Id.* Thus, the Presbyterian Church (U.S.A.) has affirmed that "no law should impose criminal penalties against any woman who chooses or physician who performs a medically safe abortion." Minutes of the 204th General Assembly of the Presbyterian Church (U.S.A.) 372 (1992).

In addition, through its General Assembly, the Presbyterian Church (U.S.A.) has stated that abortions should not be used as a method of birth control, but that abortions later in pregnancy should be an option, particularly in the case of women of menopausal age who do not discover they are pregnant until the second trimester, women who discover through fetal diagnosis that they are carrying a fetus with a grave genetic disorder, or women who did not seek or have access to medical care during the first trimester. *Covenant and Creation: Theological Reflections on Contraception and Abortion*, adopted by the 195th General Assembly of the Presbyterian Church (1983).[6]

Other Protestant churches support a woman's choice regarding abortion because of potential risks to the life or physical or mental health of the mother, because of concerns about the social situation in which the infant might be born, and because of instances of severe deformity of the fetus. *McRae*, 491 F. Supp. at 701 (citing testimony of

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[6] The 209th General Assembly of the Presbyterian Church (U.S.A.) in 1997 refused to call for a ban on the intact D&E procedure, and instead offered "moral guidance" on the subject. That guidance stated that the procedure is "of grave moral concern and should be considered only if the mother's physical life is endangered by the pregnancy."

Reverend John Philip Wogaman, United Methodist minister). The United Methodist Church, for example, believes in the "sanctity of unborn human life," but feels "equally bound to respect the sacredness of the life and well-being of the mother, for whom devastating damage may result from an unacceptable pregnancy." United Methodist Church, *The Book of Discipline of the United Methodist Church* ¶ 65 (1996). The Church maintains that "[g]overnmental laws and regulations do not provide all the guidance required by the informed Christian conscience." *Id.*

Accordingly, the church's General Conference has maintained a stance since 1970 that opposes restrictive abortion legislation. United Methodist Church, *Responsible Parenthood and the Church in Mission* 2 (1992). In 1988, the United Methodist Church resolved further that "We support the legal right to abortion as established by the 1973 Supreme Court decisions. We encourage women in counsel with husbands, doctors and pastors to make their own responsible decisions concerning the personal or moral questions surrounding the issue of abortion." United Methodist Church, *Resolution on Responsible Parenthood* (1988).

The Evangelical Lutheran Church in America stated in 1991 that "there can be sound reasons for ending a pregnancy through induced abortion. . . . We recognize that conscientious decisions need to be made in relation to difficult circumstances that vary greatly." Churchwide Assembly on the Evangelical Lutheran Church in America, Social Teaching Statement on Abortion (1991). The Church therefore believes that it may be morally responsible to terminate a pregnancy where necessary to protect the life of the mother, where pregnancy results from rape

or incest, or where the fetus has severe anomalies that are incompatible with life. *Id.* The Lutheran Women's Caucus resolved in 1990 to affirm that "a woman with an unintended pregnancy deserves the compassionate support of those closest to her, regardless of whether she terminates or continues her pregnancy." Lutheran Women's Caucus, Convocation Gathering (1990).

Within the Jewish tradition, there is considerable agreement that the fetus is not a person before birth, and that abortion is to be permitted, and may even be required in situations where the life of the mother is threatened. David M. Feldman, *Marital Relations, Birth Control, and Abortion in Jewish Law* 271-84 (1986); Raymond A. Zwerin & Richard J. Shapiro, *Abortion: Perspectives from Jewish Traditions* (undated) ("The fetus is not a person; it has no rights."); *see also* Hayim Halevy Donin, *To Be a Jew* 140-41 (1972) ("All halakhic scholars agree that therapeutic abortions – namely, abortions performed in order to preserve the life of the mother – are not only permissible but mandatory."). Beyond this, however, different branches of Judaism, and groups within each branch, hold divergent views about the legal and moral status of abortion and about the circumstances under which it is permitted.

Within the different strands of Orthodox Judaism, for example, there is disagreement as to whether a non-therapeutic abortion is homicide, whether avoiding severe mental anguish of the mother is an adequate basis for permitting an abortion of a fetus with severe defects, and whether it is permissible to include in the choice of an abortion consideration of the potential suffering of a severely disabled fetus carried to term. *See* Feldman,

supra, at 284-94; Donin, *supra*, at 141; Immanuel Jakobovits, "Jewish Views on Abortion," *in Jewish Bioethics* 118 (Fred Rosner & J. David Bleich eds., 1979); J. David Bleich, "Abortion in Halakhic Literature," *in Jewish Bioethics* 134 (Fred Rosner & J. David Bleich eds., 1979).

Conservative, Reform, and Reconstructionist branches of Judaism share a more liberal approach to abortion, and believe that individual women may treat an abortion decision in light of their own religious and moral views. The Central Conference of American Rabbis in 1980 reaffirmed that "Jewish legal literature permits therapeutic abortion," and that the "decision concerning any abortion must be made by the woman and not by the state or any other external agency." Similarly, over 700 Reform rabbis signed a letter in 1998 opposing the federal "partial-birth abortion" ban. That letter states: "As rabbis, we are often called upon to counsel families facing difficult decisions concerning reproductive health choices, including abortion. Like other members of the clergy, we turn to religious law and teachings for guidance in providing such counsel. Judaism has laws governing the issue of abortion, but each case is considered individually. . . . Abortion is a deeply personal issue. Women are capable of making moral decisions, often in consultation with their clergy, families and physicians, on whether or not to have an abortion. We believe that religious matters are best left to religious communities, not politicians." Letter of 729 Rabbis in Support of the President's Veto of H.R. 1122 (Sept. 10, 1998).

The United Synagogue of Conservative Judaism reaffirmed in 1991 that "under special circumstances, Judaism chooses and requires abortion as an act which affirms

and protects the life, well being and health of the mother. . . . [T]o deny a Jewish woman and her family the ability to obtain a safe, legal abortion when so mandated by Jewish tradition, is to deprive Jews of their fundamental right of religious freedom."

Even in these branches, however, authorities differ considerably about the circumstances under which abortion is permitted or required. Some consider abortion to be a religious duty when a pregnancy threatens a woman's life or health. Some would protect a woman's choice to abort simply as a matter of her right to control her own destiny. Morrison D. Bial, *Liberal Judaism at Home: The Practices of Modern Reform Judaism* 12-13 (Rev. ed. 1971). Others emphasize the harm to a woman's physical and emotional well-being that may be caused by a pregnancy as reasons for permitting abortion.

Unitarians have long supported abortion rights. The Unitarian Universalist Association affirmed a woman's right to choose to terminate her pregnancy in 1963 and has consistently reaffirmed that right since then. In 1987, the Association resolved to reaffirm "its historic position, supporting the right to choose contraception and abortion as legitimate aspects of the right to privacy." Unitarian Universalist Association, 1987 General Resolution, *Right to Choose*. Accordingly, in 1993, the Association resolved to urge passage of federal legislation to "guarantee the fundamental right of individual choice in reproductive matters." Unitarian Universalist Association, 1993 General Resolution, *Federal Legislation for Choice*.

It is obvious that many strongly held religious beliefs directly clash with the Act. In some circumstances, the

Act directly interferes with the religious lives of those who are adherents to certain beliefs. For those for whom abortion may be required by their religion in the case of a threat to their life or health, the Act interferes with their choice. For those whose religion dictates that authentic choice is an ethical necessity, the Act negates the freedom of that choice.

Under *Casey*, therefore, Nebraska's Act is unconstitutional. Given the range of beliefs about abortion, the state is not permitted to impose one view as orthodoxy where it would interfere with a fundamental right. By adopting the Act, which as the Eighth Circuit correctly held is so broad as to ban the safest and most common second trimester procedures, Nebraska did precisely what the government must not do under the Constitution. Nebraska has unconstitutionally imbedded into law certain religious beliefs over others. The Act, therefore, unconstitutionally infringes not only on the right to privacy, but also on the right of religious liberty that underlies that right.

III. THE ACT IMPOSES AN UNDUE BURDEN ON THE RIGHT OF WOMEN – RELIGIOUS AND NON-RELIGIOUS – TO DECIDE WHETHER OR NOT TO TERMINATE A PREGNANCY, AND IS THEREFORE UNCONSTITUTIONAL UNDER *CASEY*.

The Act unconstitutionally interferes with a woman's right to make her own decision about whether and when to bear children, in consultation with her husband or partner and her faith. Thus, it was proper for the Eighth Circuit to conclude that the Act imposes an undue burden

on a woman's right to seek an abortion in violation of *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992). The ban is not limited to "late-term" procedures, nor is it a ban on abortions of viable fetuses. Rather, it effectively bans the safest and most common second trimester abortion procedures. As the Court of Appeals observed, "both the proof and the legal arguments in this case seem to be exclusively about nonviable fetuses." *Carhart v. Stenberg*, 192 F.3d 1142, 1151 (8th Cir. 1999) (20a).[7] Thus, the Act would ban a woman from acting consistently with her religious conscience in making the most personal decision whether to terminate her pregnancy long before viability.

For this reason, in 1996, sixty-nine national religious leaders signed a letter opposing the federal "partial-birth abortion" legislation. In that letter, those leaders stated that:

> We are convinced that each woman who is faced with such difficult moral decisions must be free to decide how to respond, in consultation with her doctor, her family, and her God. . . . [N]one of us can discern God's will as well as the woman herself, and that is where we believe the decision must remain.
>
> Indeed, where religious people have such profound and sincere differences – even within our own denominations and faith groups – the government must not legislate, and thus impose,

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[7] In fact, the evidence in the district court was clear that respondent only performs abortions of non-viable fetuses. 192 F.3d at 1146 (7a); *Carhart v. Stenberg*, 11 F. Supp. 2d 1099, 1101 (D. Neb. 1998) (Finding of Fact ¶ 9) (5sa).

> one religious view on all our citizens. To do so violates our most cherished tradition of religious freedom.

Letter to President Clinton from Religious Leaders (Apr. 29, 1996); Laurie Goodstein, "Religious Leaders Back Abortion Ban Veto," *Wash. Post*, Apr. 30, 1996, at A4.

Moreover, the Eighth Circuit properly rejected the argument asserted by amici for petitioners that *Roe* and *Casey* do not apply to the Act because it regulates the "process of birth" rather than abortion. Despite the misleading title of the Act – purporting to ban "partial-birth abortion," a term coined by proponents of the legislation which is *not* a medical term – the Act has nothing to do with "birth." Nor does it have anything to do with preventing infanticide of a "partly born child." The arguments of amici amount to nothing more than semantical word play. Rather, the procedure banned by the Act is defined so broadly that it bans pre-viability abortion procedures, in direct contravention of *Casey*.

The record in this case makes clear that women who choose to terminate their pregnancies do so for a variety of reasons, in light of their own religious convictions and conscience and in keeping with the professional judgment of their physicians. Some health conditions pose serious risks during pregnancy, and those risks may become critical as the pregnancy progresses. Other women seek abortions after learning of severe or fatal fetal anomalies. *See, e.g., Carhart v. Stenberg*, 11 F. Supp. 2d 1099, 1113 (D. Neb. 1998) (Finding of Fact ¶ 61) (36sa); *see also* John M. Swomley, "The 'Partial-Birth' Debate in 1998," *The Humanist*, Mar. 1998, at 5; Religious Coalition for Reproductive Choice, *Partial Compassion: Legislative Attacks on Abortion* (undated). The Act unconstitutionally interferes with the ability of those women to exercise their moral and legal rights to make their own judgments about whether and when to bear children, in consultation with their family, their physicians, and their faith.

CONCLUSION

The Court has stated that the "very purpose of a Bill of Rights was to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's right to life, liberty, and property, to free speech, a free press, freedom of worship and assembly, and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." *Barnette*, 319 U.S. at 638. The Court's role in preserving space for religious freedom is never more crucial than when there is massive public turmoil surrounding a subject. Otherwise, majorities, or even effectively mobilized minorities, can invoke the power of the state to curb the religious freedoms of those whose views they do not like. If this role is to mean anything, the Court should preserve a woman's right to terminate her pregnancy consistent with her own personal or religious conscience, and reject Nebraska's attempt to interfere with that right.

For these reasons, and for those stated by respondent, we respectfully urge the Court to affirm the

judgment of the United States Court of Appeals for the Eighth Circuit.

Respectfully submitted,

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APPENDIX A

*Asterisk indicates organization/affiliation/title is for identification purposes only. The organization is not signing on to the brief.

Statement of Interest of the American Friends Service Committee

The American Friends Service Committee (AFSC) has worked since 1917 as a social justice arm of the Religious Society of Friends to root out the causes of violence in our society that lie in poverty, exclusion and denial of equal opportunity and rights and to support rights of conscience. For two decades the AFSC has taken a consistent position supporting a woman's right to follow her own conscience concerning child-bearing, abortion and sterilization, free of coercion including government coercion and the coercion of poverty, racial discrimination and unavailability of services to those who cannot pay.

Statement of Interest of the American Humanist Association

The American Humanist Association (AHA), founded in 1941, has members and affiliates throughout the United States. The AHA affirms the right to privacy and the right of every woman to freedom of conscience and freedom of choice in dealing with problem pregnancies. The AHA has participated as an *amicus curiae* in cases involving freedom of conscience and religious liberty concerns.

Statement of Interest of the American Jewish Committee

The American Jewish Committee (AJC), a national organization of approximately 100,000 members and supporters, was founded in 1906 to protect the civil and religious rights of Jews. AJC believes that this goal can best be achieved by preserving the constitutional rights, including the fundamental right of access to abortion, of all Americans. For this reason, AJC firmly believes that when faced with reproductive health decisions – often in the context of wanted pregnancies gone tragically wrong – women and their families, in consultation with their doctors and in accordance with their religious beliefs, must be able to choose the medical procedure that is safest for the woman and best protects her ability to bear future children.

Statement of Interest of Americans for Religious Liberty

Americans for Religious Liberty (ARL) is a non-profit public interest educational organization dedicated to defending religious liberty, freedom of conscience, and First Amendment rights. ARL has participated as an *amicus curiae* in cases before the Supreme Court and other courts where these concerns have been implicated.

Statement of Interest of the Anti-Defamation League of B'nai B'rith

The Anti-Defamation League of B'nai B'rith (ADL) is a national Jewish human relations organization dedicated to principles of religious and individual liberty including

the right to privacy. ADL views abortion as an issue of personal and religious freedom. Accordingly, it believes that a woman's decision to have an abortion is constitutionally protected, with due regard for the right of women to exercise freely their own religious beliefs and not be constrained by the religious beliefs of others which have been given the sanction of state law. ADL recognizes that various religious faiths and denominations hold divergent views about abortion. In light of this multiplicity of views, ADL believes that no single religious group's beliefs should be legislatively established. Rather, individuals should be permitted broad latitude in deciding for themselves in accordance with their own religious and moral convictions, whether to continue a pregnancy to term. Thus, ADL views most forms of government interference with an individual's exercise of religious conscience on the question of procreative choice, before viability, including those here at issue, to be unconstitutional under the First and Fourteenth Amendments. For these reasons, ADL supports the principles established in *Roe v. Wade*, 410 U.S. 113 (1973), and opposes erosion of the fundamental rights secured by that decision.

ADL has previously filed briefs in this Court in numerous cases dealing with First and Fourteenth Amendment principles, including *Mitchell v. Helms* (1999); *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992); *Webster v. Reproductive Health Services* (1989); *Bowen v. Kendrick* (1988); *Frazee v. Illinois Dep't of Employment Sec.* (1989). Thus, the Anti-Defamation League is able to bring its special expertise relating to religious liberty and its experience advocating religious freedom to the issues raised on this appeal.

Statement of Interest of the Central Conference of American Rabbis

The Central Conference of American Rabbis (CCAR) was founded in 1889. Its members are the body of rabbis who consider themselves and are considered to be the organized rabbinate of Reform Judaism.

Its members consist of Reform Rabbis ordained at the HUC-JIR Hebrew Union College-Jewish Institute of Religion, as well as Reform Rabbis ordained at liberal seminaries in Europe, and some rabbis who joined the Reform movement sometime subsequent to ordination. Most of the latter were ordained either at the Conservative Jewish Theological Seminary or the Reconstructionist Rabbinical College.

At its annual conventions, the Central Conference of American Rabbis has passed several resolutions affirming its pro-choice position. In 1967 the Conference stated: "We strongly urge the broad liberalization of abortion laws in various states, and call upon our members to work toward this end." In 1980, the CCAR reaffirmed this position with the following comments:

> Jewish legal literature permits therapeutic abortion.
>
> The decision concerning any abortion must be made by the woman and not by the state or any other external agency.
>
> We oppose all constitutional amendments and legislation which would abridge or circumscribe this right.

Statement of Interest of Christians for Justice Action

Christians for Justice Action (CJA), a group of clergy and lay activists of the United Church of Christ (UCC), aspires to live out God's call for justice, and to lift up justice concerns within our denomination and society. Our leadership team numbers twenty, and we are supported by approximately 1,400 UCC members.

We hold human life as sacred. We recognize that the choice of whether to bear a child has profound moral weight. We recognize that the function of women in our world goes far beyond the bearing of young, and that the worth of women does not depend on their ability or willingness to bear a child. We believe that there are times and circumstances that can turn a childbirth from a moment of joy and grace to a crisis or tragedy. We believe that the choice to bear young does and should exist, before and after conception. We believe the choice to bring a pregnancy to term or to terminate it belongs with the individual, acting in consultation with those whom she trusts and who demonstrate their care for her without coercion. Therefore Christians for Justice Action reaffirms the Supreme Court ruling of 1973, *Roe v. Wade*, which permits a woman to make a decision regarding abortion based on her own conscience and religious beliefs. Furthermore, we are well aware of a wide range of religious convictions on whether terminating a pregnancy is acceptable. We oppose efforts to enact into law one particular religious doctrine on abortion or the beginning of human life.

In taking this position we stand with the United Church of Christ as a denomination, which voted to recognize a

woman's right to reproductive choice in its 8th General Synod in 1971, and reaffirmed that decision in the 9th General Synod (1973), the 11th General Synod (1977), the 12th General Synod (1979), the 13th General Synod (1981), the 16th General Synod (1987), and the 17th General Synod (1989).

Statement of Interest of the Clergy Advisory Board, Planned Parenthood Federation of America

The clergy members of the Clergy Advisory Board represent a cross section of religious communities in the United States. Their position on the subject of a woman's right to choose to have an abortion stems from the fact there is no uniform theological consensus on this difficult subject. What is consistently held is that a woman should be left to follow her own conscience in dialogue with her God, her physician, and others whose guidance she seeks, to make this most personal decision.

The intervention of any governmental entity to "help" her, or to attempt to persuade or dissuade her in this regard, represents an inexcusable intrusion into what is, without doubt, one of the most intimate, sacred precincts, i.e., "the pursuit of happiness," embodied in the exercise of a person's values in deciding when or whether to bring a child into the world. There can be no compelling interest of the government to interfere in what we the members of the Clergy Advisory Board construe as a woman's right to follow the dictates of her conscience and value system, especially in the absence of a uniform religious consensus on this subject, or a consensus on the part of the American people. Therefore we reaffirm the Supreme

Court ruling of 1973, *Roe v. Wade*, which permits a woman to use her own discretion untrammeled by any other controlling authority in deciding whether to avail herself of this medical procedure.

Statement of Interest of the Clergy Committee of Planned Parenthood Springfield Area

The Clergy Committee of Planned Parenthood Springfield Area, consisting of a variety of religious backgrounds, has wrestled with these issues concerning reproductive choice and human life. We recognize possible conflicts of life with life and through our various faith traditions believe in and support a woman's right to make her own informed choices about contraception and terminating or continuing a pregnancy and to receive safe and proper medical treatment. We hold in high respect the value of potential human life; we do not take the question of choice lightly. In our nation, diverse denominations and faith groups approach the issue of choice from the unique perspective of their own theology, often holding widely varying viewpoints as to when abortion is morally justified. It is exactly this plurality of beliefs which leads us to the convictions that the abortion decision must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference. Therefore we reaffirm the Supreme Court ruling of 1973, *Roe v. Wade*, which permits a woman to make a decision regarding abortion based on her own conscience and religious beliefs. We oppose efforts to enact into secular law one particular religious doctrine on abortion or the beginning of human life.

Statement of Interest of the Coordinating Center for Women in Church and Society of the United Church of Christ

The Coordinating Center for Women in Church and Society of the United Church of Christ is a national agency of the United Church of Christ which seeks to "address the concerns of women and work toward the elimination of sexism in church and society." *The Constitution and Bylaws, United Church of Christ*, Paragraph 231.

Recognizing the diversity of religious and theological perspectives on issues related to abortion even within our own denomination, the General Synod of the United Church of Christ has reaffirmed at its meetings in 1979, 1981, 1985, 1987, 1989, and 1991 full freedom of choice for those engaged in decision-making regarding pregnancy as stipulated in *Roe v. Wade*, and has opposed any restrictions that would prevent women from exercising their constitutionally protected individual right to privacy in these matters according to their own conscience and religious beliefs.

We also join as *amicus curiae* to protect the health care of women and the right of their physicians to offer them the safest and most appropriate medical procedures to ensure their health and well-being. These are decisions that should be determined by physicians and their patients, not lawmakers.

Statement of Interest of Disciples for Choice

Disciples for Choice is an organization of members of the Christian Church (Disciples of Christ) and friends of the cause of reproductive choice. The organization numbers

150 and endeavors to maintain the freedom of every woman to decide when to bear children according to her own conscience and religious belief, without governmental interference. Disciples for Choice holds high the dignity of women as responsible decision makers. It also recognizes the diverse approaches to the issue of reproductive choice among the faith groups and denominations. This spectrum of views as to when abortion may be morally justified provides the context which supports the conviction that the individual must make the abortion decision utilizing the guidance of personal faith and counsel. The stance of responsible freedom is supported historically by General Assembly Resolutions #24 (San Antonio, 1975): "Therefore be it resolved that the General Assembly:

1. Affirm the principle of individual liberty, freedom of individual conscience, and sacredness of life for all persons,

2. Respect differences in religious belief concerning abortion and oppose in accord with the principle of religious liberty, any attempt to legislate a specific religious opinion or belief concerning abortion upon all Americans,

3. Provide through ministry of the local congregations, pastoral concern and nurture of persons faced with the responsibility and trauma surrounding undesired pregnancy."

Statement of Interest of the Disciples Justice Action Network

The Disciples Justice Action Network is a network of fifty groups and three hundred individuals and families who are linked together to work for justice in and beyond the Christian Church (Disciples of Christ). Included in the network are the Disciples Peace Fellowship (DPF), the Gay, Lesbian, and Affirming Disciples Alliance (GLAD), Disciples for Choice, Disciples Advocacy Washington Network (DAWN), Light of the World Christian Church, Disciples Witness for Justice (Oklahoma), the Indiana Region of the Christian Church, and forty-three other congregations and groups. We consider the decision about childbirth a religious decision, and primarily the decision of the mother. She must have access to the best and safest medical techniques in either bringing an embryo to birth or aborting the process when that is indicated.

Statement of Interest of Disciples Witness for Justice

Disciples Witness for Justice, a Subcommission of the Christian Church (DOC) in Oklahoma, has been a functioning group addressing peace and justice issues for nearly 20 years. We operate with the following Mission Statement adopted four years ago: Disciples Witness for Justice exercises prayerful discernment under the moral authority of Christ and the Scriptures to help the church seek prophetic action in: (1) Cultivating faith and reason as resources for increasing understanding and integrity as the church answers its call to be God's agent for social change, and (2) Responding to human and social needs especially those of the marginalized and oppressed.

We believe that there are times in people's lives, known only to them, when the advent of an unplanned and unwanted pregnancy presents a crisis beyond measure. Doing justice requires that every person should have access to counseling and medical services necessary for a safe, legal resolution to this crisis. This solution should be in keeping with their religion, values and conscience without government interference.

Statement of Interest of Rev. Lauren D. Ekdahl, Trinity United Methodist Church, Lincoln, Nebraska*

I am writing to express my grave concern that the issue addressed in *Stenberg v. Carhart* will infringe on the right of religious persons, Christian and non-Christian, to hold the belief that human personhood is established at some time other than conception and that the right to a medically safe and legal abortion should be protected for women in our multi-religious democracy. We are not a theocracy. It is wrong to write sectarian notions about the beginning of full personhood into a law that would restrict women in the exercise of their moral agency in accordance with their religious belief when there is no universal consensus among religious traditions on that issue except for full live birth.

In Lincoln, Nebraska, an organization called "Rescue the Heartland" picketed the Westminster Presbyterian Church. I organized clergy of the community to stand in solidarity with Westminster at a press conference supporting the church's decision to retain Dr. Winston Crabb, a physician who performs abortions, on their Board of Elders.

Statement of Interest of the Episcopal Diocese of Newark

The Protestant Episcopal Church in the United States of America (the Episcopal Church) by resolution of General Convention in 1976 set forth the Church's "unequivocal opposition to *any* legislation on the part of national or state governments which would abridge or deny the right of individuals to reach informed decisions (on the matter of abortion) and act upon them." That unequivocal opposition to governmental action abridging the right of individuals to make informed decisions on this matter has been consistently reaffirmed by subsequent actions of the General Convention. In 1981, the Convention of the Diocese of Newark of the Episcopal Church, which I serve as Bishop, adopted a resolution incorporating the identical language as the 1976 General Convention resolution indicating this Diocese' "unequivocal opposition to *any* legislation on the part of national or state governments which would abridge or deny the right of individuals to reach informed decisions [on the matter of abortion] and act upon them." That resolution has similarly been repeatedly reaffirmed by Diocesan Convention in the Diocese of Newark. I strongly support the position of the Episcopal Church both nationally and within the Diocese of Newark in opposing governmental restraints on the free exercise of a woman's right to make reproductive choices for herself.

Accordingly, on behalf of the Diocese of Newark and my own behalf as its Bishop, I ask that we be included among those names as *amicus curiae* in support of Dr. LeRoy Carhart in *Stenberg v. Carhart*.

The Rt. Rev. John Palmer Croneberger

Bishop of Newark

Statement of Interest of Hadassah, the Women's Zionist Organization of America, Inc.

Hadassah, the Women's Zionist Organization of America, is the largest women's and the largest Jewish membership organization in the United States with over 300,000 members nationwide. Founded in 1912, Hadassah is traditionally known for funding and maintaining health care institutions in Israel. However, Hadassah also has a proud history of protecting the rights of women and the Jewish community in the United States, whether by supporting equal rights, freedom of choice, access to health care, or working to eliminate all forms of discrimination against women. Hadassah has a longstanding commitment to supporting and working to protect a woman's right to choose abortion and other reproductive health care services. Hadassah views freedom of choice "as a matter of privacy of the individual to be determined by each woman in accordance with her religious, moral and ethical values."

Tana Senn, National Director, American Affairs/Domestic Policy

Statement of Interest of Jewish Women International

Jewish Women International (JWI) was founded in 1897 as B'nai B'rith Women by a group of Jewish women who sought to improve the quality of life for women in their communities. Now an organization of over 40,000 women

in the United States and Canada, JWI continues to strengthen the lives of women and families through its mission to break the cycle of violence through education, advocacy and action – locally, nationally and around the world. In our work to ensure that women and children live free from violence and abuse, we consider a woman's right to exercise choice over her reproductive rights to be essential to that goal. As Jews, we consider each life to be sacred. However, we affirm the Supreme Court ruling of 1973, *Roe v. Wade*, which permits a woman to make her own choice about abortion based on her own beliefs about when life begins.

Statement of Interest of The Rt. Rev. Edward L. Lee, Jr. of the Diocese of Western Michigan*

As a bishop of the Episcopal Church, I have several concerns about the Nebraska statute. I know that scientists, ethicists, theologians, and other faithful persons differ about the time that life begins, and I worry when states attempt to answer existential question by statute. Similarly, I recognize the decision to have or not to have an abortion is a profound and personal decision to be made by the moral agent involved (that is to say, by the pregnant woman). I must object to any statute which would deny an individual the information and legal right necessary to make an informed decision about her reproductive health or the ability to act upon that decision.

Statement of Interest of the Maine Interfaith Council for Reproductive Choices

The Maine Interfaith Council for Reproductive Choices (MICRC) is a statewide network of pro-choice clergy from diverse traditions, including Episcopalian, Presbyterian (U.S.A.), United Church of Christ, United Methodist, Unitarian Universalist, Reformed Judaism, and Conservative Judaism. Our mission is threefold: to educate our congregations and the larger community about the morality of reproductive choices, to affirm women as moral agents in making reproductive decisions, and to promote public policy that guarantees reproductive freedom.

As religious leaders in Maine, we work in congregations and in the public arena to uphold the fundamental freedom of reproductive privacy and choice expressed in the 1973 Supreme Court decision *Roe v. Wade*. Most recently, MICRC has been a coalition partner in the campaign to defeat a citizen-initiated referendum on "partial birth abortion" that appeared on the November 1999 ballot. In addition to education and advocacy, MICRC offers pastoral counseling services to women (and their partners) who are seeking to make informed, morally responsible choices about reproduction, including the choice to terminate a pregnancy.

Because we recognize, as teachers of faith and morals, that there is a plurality of beliefs about these sensitive matters, we strongly believe that every person should be educated about reproductive options and encouraged to make choices on the basis of sound medical information and in terms of their own religious beliefs and moral values. Moreover, government should not legislate any particular

religious or moral viewpoint about these matters, but rather respect the right and responsibility of women to make their own decisions in light of their faith tradition and ethical values.

Statement of Interest of the Methodist Federation for Social Action

The Methodist Federation for Social Action has been in existence since 1907. We are an independent, nation-wide network of United Methodists committed to providing a fruitful witness to the Gospel of Jesus Christ, working primarily through the ministries of the United Methodist Church. Our 2,000 members are organized into thirty-seven chapters throughout the country. Members work on a wide variety of peace and justice issues including religious liberty, promotion of human rights, non-discrimination, and the empowerment of women. We support reproductive choice.

We affirm the goodness of God's creation and the sacredness of all creation. Therefore, we do not take the question of abortion lightly. We long for a world where abortion is unknown. We envision a world where every child is a wanted child; where family planning and birth control are readily available to and practiced by all the peoples of the world; where adequate nutrition, medical, spiritual, emotional and psychological care is available to all; where meaningful employment and the means to support oneself and one's family are universal; and where adequate prenatal, perinatal, maternal, and child care is available to all. We also recognize that in an imperfect world these goals will never be fulfilled equitably for all people.

Because we regard all life as sacred, we regard the life and well being of the mother to be just as valuable as the potential life of the fetus. We recognize that there are many situations in which more than one of our most deeply held religious and moral values about the sacredness of life will come into conflict with each other. And we recognize that only the individuals most intimately involved in a crisis pregnancy can adequately weigh the factors and values in conflict and come to a decision about the most appropriate course of action. In view of this, we support the right of a woman to choose whether to carry her pregnancy to term, keep her child, give her child up for adoption, or terminate her pregnancy.

The right of reproductive freedom is an issue of religious liberty. Different religious traditions hold widely differing positions on issues related to birth control, pregnancy, abortion, and other issues of reproductive freedom. Because we are guaranteed religious freedom in our Constitution, we believe that reproductive issues ***must*** remain free from government interference. We believe that for secular authority to codify any particular religious tradition or position into law is a violation of the religious liberty of all religious traditions whose teachings differ from that law.

Statement of Interest of Dr. Virginia Ramey Mollenkott, Professor Emeritus, William Paterson University*

According to Scripture, God knew that Adam and Eve would misuse their power to choose. Yet God chose to give them that power, creating them "sufficient to have stood, though free to fall." We human beings should follow our

Creator's example by giving one another moral elbow room. Through the ages, a remarkable number of women have willingly and unselfishly devoted themselves to their children. The way to honor them, and to honor God, is to restrain ourselves from coercion and to seek government policies that support the moral agency of women as well as men, of people of color as well as whites, and of poor people as well as the affluent.

Statement of Interest of The National Council of Jewish Women

The National Council of Jewish Women (NCJW), Inc. is a volunteer organization, inspired by Jewish values, that works through a program of research, education, advocacy and community service to improve the quality of life for women, children and families and strives to ensure individual rights and freedoms for all. Founded in 1893, the National Council of Jewish Women has members in over 500 communities nationwide. Given NCJW's *National Priorities* which state, "We endorse and resolve to work for the protection of every female's right to reproductive choice, including safe and legal abortion, and the elimination of obstacles that limit reproductive freedom," we join this brief.

Statement of Interest of The Rabbinical Assembly

The Rabbinical Assembly, representing more than 1,400 rabbis associated with The Conservative Movement, is pleased to join with other religious organizations in proceedings before the United States Supreme Court in *Stenberg v. Carhart* as an *amicus curiae* in support of Dr. LeRoy

Carhart. The Rabbinical Assembly holds in high respect the value of potential human life. We do not take the question of choice lightly. In our nation, diverse denominations and faith groups approach the issue of choice from the unique perspective of their own theology, often holding widely varying viewpoints as to when abortion is morally justified. It is exactly this plurality of beliefs which leads us to the convictions that the abortion decision must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference. Therefore, we affirm the Supreme Court ruling of 1973, *Roe v. Wade*, which permits a woman to make a decision regarding abortion based on her own conscience and religious beliefs. We oppose efforts to enact into secular law one particular religious doctrine on abortion or the beginning of human life.

Since 1983, The Rabbinical Assembly is on record recognizing the permissibility of therapeutic abortion. It has reaffirmed that position subsequently. In addition, since 1985, The Rabbinical Assembly has passed several resolutions in support of *Roe v. Wade*.

Statement of Interest of the Religious Coalition for Reproductive Choice

The Religious Coalition for Reproductive Choice submits this statement of interest in *Stenberg v. Carhart* in accordance with our policies and positions. The Religious Coalition for Reproductive Choice, founded in 1973 as the Religious Coalition for Abortion Rights, is a non-partisan, non-profit education and advocacy coalition of more than 40 national groups. The groups are from 16 denominations

and faith traditions with official statements on reproductive choice, including the Episcopal Church, Presbyterian Church (USA), United Church of Christ, United Methodist Church, Unitarian Universalist Association, and the Reformed, Conservative, and Reconstructionist movements of Judaism. Member groups must meet specific criteria regarding their position on reproductive choice and must be based in a religious tradition.

As the only national coalition of pro-choice people of faith and religious and religiously affiliated organizations, the Religious Coalition for Reproductive Choice supports the moral and legal right of a woman to make her own judgments about whether and when to bear children, in consultation with her husband or partner and her faith. Laws banning abortion and abortion procedures without regard for a woman's life and health fail to respect women as moral decision-makers, in contradiction to the teachings of many religions.

The question of problem pregnancies has been addressed by many religions with many different views and interpretations. In 1996, sixty-nine religious leaders from Religious Coalition member organizations stated: "Where religious people have such profound and sincere differences – even within our own denominations and faith groups – the government must not legislate, and thus impose, one religious view on all our citizens. To do so violates our most cherished tradition of religious freedom."

Given the dramatically contrasting religious views about whether and when abortion is permitted or required, as set out in the *amicus curiae* brief of the Religious Coalition for

Reproductive Choice and other organizations and individuals, state statutes drastically curtailing access to abortion unacceptably interfere with constitutionally protected rights of individual privacy and religious liberty as they apply to critical decisions about the family.

Statement of Interest of the Religious Coalition for Reproductive Choice Affiliates

The following independent organizations, affiliated with the national Religious Coalition for Reproductive Choice, wish to join this brief in support of Dr. LeRoy Carhart: Colorado Religious Coalition for Reproductive Choice, Illinois Religious Coalition for Reproductive Choice, Iowa Religious Coalition for Reproductive Choice, Kentucky Religious Coalition for Reproductive Choice, Maryland Religious Coalition for Reproductive Choice, Massachusetts Religious Coalition for Reproductive Choice, Michigan Religious Coalition for Reproductive Choice, Minnesota Religious Coalition for Reproductive Choice, Missouri Religious Coalition for Reproductive Choice, Nebraska Religious Coalition for Reproductive Choice, New Jersey Religious Coalition for Reproductive Choice, New Mexico Religious Coalition for Reproductive Choice, New York Metro Religious Coalition for Reproductive Choice, New York State Religious Coalition for Reproductive Choice, Northern California Religious Coalition for Reproductive Choice, Ohio Religious Coalition for Reproductive Choice, Oklahoma Religious Coalition for Reproductive Choice, Pensacola Religious Coalition for Reproductive Choice, Southern California Religious Coalition for Reproductive Choice, Washington State Religious Coalition for Reproductive Choice, Western New York

Religious Coalition for Reproductive Choice. Each organization has a multi-faith board of directors that works to ensure reproductive choice and religious freedom.

We hold in high respect the value of potential human life; we do not take the question of choice lightly. In our nation, diverse denominations and faith groups approach the issue of choice from the unique perspective of their own theology, often holding widely varying viewpoints as to when abortion is morally justified. It is exactly this plurality of beliefs which leads us to the convictions that the abortion decision must remain with the individual, to be made on the basis of conscience and personal religious principles, and free from governmental interference. Therefore we reaffirm the Supreme Court ruling of 1973, *Roe v. Wade*, which permits a woman to make a decision regarding abortion based on her own conscience and religious beliefs. We oppose efforts to enact into secular law one particular religious doctrine on abortion or the beginning of human life.

Statement of Interest of the Rt. Rev. Douglas E. Theuner, Bishop of New Hampshire, Episcopal Diocese of New Hampshire*

In conjunction with previous resolutions of the General Convention of the Episcopal Church in the United States of America, I believe that it is imperative to support the right of women to make responsible reproductive choices. This position is not meant to encourage abortion but to allow women to make informed and appropriate choices as to the best opportunities for themselves and any children they might bear.

Statement of Interest of the Union of American Hebrew Congregations

The Union of American Hebrew Congregations is the synagogue arm of the Reform Jewish Movement, which is the oldest and largest Jewish movement in North America. The Union represents 1.5 million Reform Jews and 898 congregations.

Statement of Interest of the Unitarian Universalist Association

The Unitarian Universalist Association is a religious association of more than 1,000 congregations in the United States, Canada and elsewhere. Through its democratic process, the Association adopts resolutions consistent with its fundamental principles and purposes. In particular, the Association has adopted numerous resolutions affirming the principles of separation of church and state and personal freedom on the issue of abortion. Particularly relevant to this case are resolutions of the General Assembly affirming the 1973 decision of the Supreme Court of the United States on abortion and the fundamental right of individual choice in reproductive matters.

Statement of Interest of the United Church Board for Homeland Ministries

The United Church Board for Homeland Ministries is a national agency of the United Church of Christ which addresses mission, evangelism, education and publication.

The United Church Board for Homeland Ministries has supported women's rights to make decisions about when

and if they will become mothers since before the *Roe v. Wade* decision in 1973. The Board passed a resolution supporting reproductive choice in the late sixties and has supported the resolutions of the General Synods of the United Church of Christ in 1971, 1973, 1977, 1979, 1981, 1987 and 1989. Our resolutions are based on our affirmation of the freedom which God has endowed men and women, and the affirmation that this freedom is bound to responsibility. We, also, affirm reverence for life – the life of the mother and the life of the fetus.

Recognizing that the rights of the woman and the rights of the fetus can conflict, we believe that a woman must make the difficult decisions based upon her faith and values. We have opposed any restriction that would prevent women from exercising their constitutionally protected right to privacy. Therefore we join in this *amicus curiae* brief to protect the health care of women and the right of their physicians to offer the safest and most medically appropriate procedures to ensure their health and well being. A decision to terminate a pregnancy needs to be made by the woman in consultation with her physician. No law should restrict a doctor from recommending the safest, most medically appropriate procedures.

Statement of Interest of the United Church of Christ Office for Church in Society

The United Church of Christ is formed of denominations and faith groups who came to America seeking religious freedom. The Congregationalists in New England insisted that each person should formulate their own religious

convictions and each church should formulate its own faith covenant. The United Church of Christ Office for Church in Society was established by the General Synod and mandated to speak out to both church and society on issues of social concern, consistent with the social pronouncements and resolution of the General Synod, the widest and most representative body within the denomination. *Freedom of Reproductive Choice* is perhaps the most widely affirmed statement of the General Synod since the formation of the UCC in 1957, with statements dating back to 1970 by our Office prior to the *Roe v. Wade* decision. Numerous Conferences have passed resolutions, as has the General Synod (which meets every two years) in 1971, 1973, 1977, 1979, 1981, 1985, 1987, 1989 and 1991. The reason for this frequent reaffirmation is that a small minority who disagree with *Freedom of Reproductive Choice* kept putting this back on state and national agendas, only to have the large majority reaffirm this stance. There are a variety of definitions within the UCC as to when life begins, including conception, implantation, quickening, six months, viability, birth. There is considerable consensus that the development of life is a process and that from conception to birth the mother, in consultation with family and doctors, needs to make the decisions for this developing life.

Statement of Interest of Women of Reform Judaism, The Federation of Temple Sisterhoods

Women of Reform Judaism, The Federation of Temple Sisterhoods, including over 100,000 women in 600 local groups nationwide, deeply committed to the social justice teachings of the prophets and the concept of *pikauch*

nefesh, the "value of life," serves humanitarian causes. Women of Reform Judaism has adopted resolutions in support of reproductive rights in 1975, 1977, and 1989, and in 1991 called for support of legislation to provide universal access to health care, including all aspects of reproductive health care, regardless of age, gender and economic status. In support of the Supreme Court decision, *Roe v. Wade*, Women of Reform Judaism has advocated the right of individual women to make a decision regarding abortion based on their conscience and religious beliefs and has opposed efforts, such as the so-called partial birth abortion ban, to redefine or curtail those rights.

Statement of Interest of the Women's Alliance for Theology, Ethics and Ritual (WATER)

The Women's Alliance for Theology, Ethics and Ritual (WATER) is a non-profit education center that seeks to promote religiously informed social change from a feminist perspective. We come from a variety of religious and cultural perspectives, including Catholics, Jews, many Protestant denominations and those who worship Goddesses. We share a commitment to women's well being.

There is a diversity and pluralism among our Alliance colleagues with regard to the question of abortion. We respect those many beliefs and work to hold them in creative tension in a democracy. Hence, we affirm the Supreme Court's decision in 1973, *Roe v. Wade*, which allows women to make the difficult decisions regarding abortion without government interference. We oppose any efforts to change that fundamental right.

We join with the many groups, religious and secular, that seek to make sex education and contraceptives available to all so as to make abortion an infrequent necessity. Meanwhile, we uphold women's reproductive choice as a sacred right.

APPENDIX B

The following is a complete list of organizations and individuals joining this brief as *amicus curiae*:

American Ethical Union
American Friends Service Committee
American Humanist Association
American Jewish Committee
Americans for Religious Liberty
Anti-Defamation League of B'nai Brith
Central Conference of American Rabbis
Christians for Justice Action
Clergy Advisory Board of the Planned Parenthood Federation of America
Clergy Committee of Planned Parenthood Springfield Area
Coordinating Center for Women in Church and Society of the United Church of Christ
Disciples for Choice
Disciples Justice Action Network
Disciples Witness for Justice
Episcopal Diocese of Newark
General Synod of the United Church of Christ
Hadassah
Jewish Reconstructionist Federation
Jewish Women International
Maine Interfaith Council for Reproductive Choices
Methodist Federation for Social Action
Na'amat USA
National Council of Jewish Women
The Rabbinical Assembly
Religious Coalition for Reproductive Choice
including the following affiliates:
Colorado Religious Coalition for Reproductive Choice
Illinois Religious Coalition for Reproductive Choice
Iowa Religious Coalition for Reproductive Choice

Kentucky Religious Coalition for Reproductive Choice
Maryland Religious Coalition for Reproductive Choice
Massachusetts Religious Coalition for Reproductive Choice
Michigan Religious Coalition for Reproductive Choice
Minnesota Religious Coalition for Reproductive Choice
Missouri Religious Coalition for Reproductive Choice
Nebraska Religious Coalition for Reproductive Choice
New Jersey Religious Coalition for Reproductive Choice
New Mexico Religious Coalition for Reproductive Choice
New York State Religious Coalition for Reproductive Choice
Northern California Religious Coalition for Reproductive Choice
New York Metro Religious Coalition for Reproductive Choice
Oklahoma Religious Coalition for Reproductive Choice
Ohio Religious Coalition for Reproductive Choice
Pensacola Religious Coalition for Reproductive Choice
Southern California Religious Coalition for Reproductive Choice
Washington State Religious Coalition for Reproductive Choice
Western New York Religious Coalition for Reproductive Choice
Religious Consultation on Population, Reproductive Health and Ethics
Union of American Hebrew Congregations

Unitarian Universalist Association
United Church Board for Homeland Ministries
United Church of Christ Office for Church in Society
United Synagogue of Conservative Judaism
Women's Alliance for Theology, Ethics and Ritual (WATER)
Women of Reform Judaism, The Federation of Temple Sisterhoods

Individuals (Asterisk indicates organization/affiliation/title is for identification purposes only. The organization is not signing on to the brief.)

Rabbi Balfour Brickner, Stephen Wise Free Synagogue
Rev. Lauren D. Ekdahl, Lincoln, Nebraska*
Joseph C. Hough, President of Union Theological Seminary*
Ann Hale Johnson, Chair of the Board, Union Theological Seminary*
The Rt. Reverend Edward L. Lee, Jr.*
The Rt. Rev. Mary Adelia McLeod, Bishop of Vermont, Episcopal Diocese of Vermont*
Reverend Robert Meneilly, Mainstream Coalition*
Dr. Virginia Ramey Mollenkott, Professor Emeritus, William Paterson University*
Rosemary Radford Ruether, Professor of Applied Theology, Garrett-Evangelical Theological Seminary*
The Rt. Reverend Catherine Roskam, Bishop Suffragan of Episcopal Diocese of New York*
Dr. John M. Swomley, Professor Emeritus of Christian Ethics, St. Paul School of Theology
Rt. Rev. Douglas E. Theuner, Bishop of New Hampshire, Episcopal Diocese of New Hampshire*
The Rev. Dr. George D. Younger
Dr. Doris Anne Younger